

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY JUNIOR JENKINS,

Petitioner,

v.

**Civil Action No. 2:05cv92
(Judge Maxwell)**

THOMAS MCBRIDE,

Respondent.

SUPPLEMENTAL REPORT AND RECOMMENDATION

On February 28, 2007, the United States Supreme Court issued an opinion in Whorton v. Bockting, Docket No. 05-595, finding that Crawford v. Washington, 541 U.S. 36 (2004), is not retroactive to cases on collateral review. See dckt. 20 at ex. A. Accordingly, for the reasons set forth in the Report and Recommendation issued on January 25, 2007, the undersigned recommends that ground three of the petition be dismissed with prejudice as untimely.¹ For those same reasons, the undersigned further recommends that the Defendant's Motion to Dismiss as untimely (dckt. 14)

¹ On December 20, 2005, Petitioner filed a petition for habeas corpus relief under 28 U.S.C. § 2254 in which he asserted four grounds for relief. On January 25, 2007, the undersigned considered a motion to dismiss as untimely by the Respondent. In the ensuing Report and Recommendation, I found that each ground raised in the petition was untimely. However, I also recognized that an exception to the one-year statute of limitations could apply to ground three if the United States Supreme Court found Crawford v. Washington retroactive to cases on collateral review. At the time of the previous Report and Recommendation, the Supreme Court had heard argument on Crawford's retroactivity in the case of Whorton v. Bockting, however, no opinion had yet to issue. Thus, the undersigned recommended that further consideration of ground three be stayed pending the Supreme Court's decision in Whorton. On February 28, 2007, the Respondent filed a copy of the Supreme Court's slip opinion in Whorton finding that Crawford is not retroactive to cases on collateral review. Therefore, as outlined in the January 25, 2007 Report and Recommendation, no exception to the one-year limitation exists and ground three is also untimely and should be dismissed with prejudice. Because each of Petitioner's four grounds for relief are now time-barred, and no exceptions to the time-bar exist, the Respondent's motion is due to be granted *in toto* and the entire petition dismissed with prejudice.

be GRANTED in its entirety and this case be dismissed with prejudice.

Within ten (10) days after being served with a copy of this supplemental recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Supplemental Report and Recommendation to the *pro se* petitioner.

DATED: March 2, 2007.

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE